

Attachment A
Reasons for Emergency Rule
WAC 246-282-005, Sanitary Control of Shellfish – Minimum Performance Standards

The Administrative Procedure Act, RCW 34.05.350, allows the Department to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012, or 2013 which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency,

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW [34.05.380](#) and with the rules review committee.

The U.S. Food and Drug Administration (FDA) published the 2013 National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish (NSSP Guide) on September 30, 2014. This guide includes license requirements for growing, harvesting, processing, and shipping molluscan shellfish in a way that is safe for human consumption. The FDA requires states to regulate these activities consistent with the NSSP Guide in order for licensees to place molluscan shellfish into interstate commerce.

The state must ensure that our requirements immediately align with the 2013 NSSP Guide in order to protect public health and prevent disease, and for FDA to allow interstate commerce of molluscan shellfish from Washington State. The short timeframe between the publication of the 2013 version of the NSSP by the FDA and the required implementation of the NSSP requirements by the state does not allow use of the regular rulemaking process. Therefore, an emergency rule is necessary in order for the state to remain consistent with the requirements of the FDA.